

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

* * *

UNITED STATES OF AMERICA.

Plaintiff,

V.

ROBERTO PEREZ.

Defendant.

| Case No. 2:12-cr-00361-APG-GWF

ORDER DENYING MOTION TO DETERMINE ELIGIBILITY FOR RELIEF

ECF No. 27

Defendant Roberto Perez pleaded guilty to one count of possession of a controlled substance with intent to distribute and one count of being an illegal alien in possession of a firearm. ECF No. 18. He was sentenced to 70 months as to each count, to be served concurrently. ECF No. 26. Perez subsequently filed a motion to determine whether he is eligible for relief under *Johnson v. United States*, 135 S.Ct. 551 (2015). Perez is not entitled to such relief.

Johnson deemed unconstitutionally vague the Armed Career Criminal Act's residual clause defining "violent felony." Perez was not sentenced under that statute. Nor was he sentenced under a statute or sentencing guideline section that included a residual clause like that ruled unconstitutional in *Johnson*. He was not deemed a career offender as he had no prior criminal history. Thus, *Johnson* is not applicable to Perez's case and Perez is not entitled to have his sentence vacated or modified.

Perez’s motion is not styled as a motion under 28 U.S.C. § 2255 motion. Nevertheless, I deny Perez a certificate of appealability because reasonable jurists could not debate my resolution of this motion and the issues are not adequate to deserve encouragement to proceed further. *Hayward v. Marshall*, 603 F.3d 546, 553 (9th Cir. 2010) (en banc), *overruled on other grounds by Swarthout v. Cooke*, 562 U.S. 216 (2011); see also R. 11 Governing § 2255 Cases in the U.S. Dist. Cts. (“The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.”).

1 IT IS THEREFORE ORDERED that Perez's motion (**ECF No. 27**) is **DENIED** and no
2 certificate of appealability shall be issued.

3 Dated this 29th day of June, 2016.

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5 ANDREW P. GORDON
6 UNITED STATES DISTRICT JUDGE
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